

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAYO AKUMBE AJAYI,

Defendant-Appellant.

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UNPUBLISHED

July 24, 2003

No. 238751

Oakland Circuit Court

LC No. 2001-179377-FH

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of larceny from a motor vehicle, MCL 750.356a(1), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to two to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to sustain the verdict. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The evidence showed that someone broke the passenger window of the complainant's car and removed electronic equipment, which has never been recovered. Although no one witnessed the crime, defendant's fingerprints were found on the inside of the passenger window. Complainant did not know defendant and had never let him inside the vehicle. Moreover, the interior and exterior of the vehicle had been washed within the previous twenty-four hours and the only prints that should have been on and in the vehicle were those of complainant, his brother, his friend, and perhaps the car wash attendant. Such evidence indicated that defendant's prints could only have been left at the time the crime was committed and thus the circumstances

surrounding their discovery was sufficient to support the jury's verdict. *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968).

Defendant next contends that the trial court erred in denying his motion for appointment of an expert. The trial court's ruling on such a motion is reviewed for an abuse of discretion, which "will be found only when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made." *People v Lueth*, 253 Mich App 670, 689; 660 NW2d 322 (2002).

An indigent defendant is not entitled to an expert for every scientific procedure. *People v Leonard*, 224 Mich App 569, 581; 569 NW2d 663 (1997). Apart from psychiatric experts to assist with presentation of an insanity defense, "a defendant is entitled to the appointment of an expert at public expense only if he cannot otherwise proceed safely to trial without the expert." *Id.* at 582. The defendant must show something more than a mere possibility of assistance from a requested expert; he must show "a nexus between the facts of the case and the need for an expert." *Id.*, quoting *Moore v Kemp*, 809 F2d 702, 712 (CA 11, 1987). Any error is not grounds for reversal unless the defendant was prejudiced and received a fundamentally unfair trial as the result of not having expert assistance. *Id.* at 582-583.

Defendant sought the appointment of a fingerprint expert to confirm or refute the testimony of the prosecutor's fingerprint expert. This request was predicated solely on the hope of finding possible exculpatory evidence. We further note that fingerprint analysis is more of a mechanical exercise than a theoretical one. Moreover, there was no preliminary showing that the prosecution's witness was incompetent, that his method of comparison was faulty, or that another examiner was likely to reach a contrary conclusion. Defense counsel was provided ample opportunity to cross-examine the prosecution's witness regarding his findings. We therefore find no abuse of discretion.

Defendant next contends that the trial court erred in denying his motion for a mistrial. A trial court's decision to deny a motion for a mistrial is also reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001).

It was suspected that defendant broke into complainant's vehicle by pulling out the passenger window. During closing argument, defense counsel argued that it was impossible to pull the window out if it was rolled up, as complainant had testified. In rebuttal, the prosecutor started to say that defendant would have known how to break out the window because he had a prior conviction of attempted unlawfully driving away a motor vehicle. This was improper because the prior conviction was admitted for impeachment purposes under MRE 609, not as substantive evidence of guilt. However, defendant objected before the prosecutor could complete her sentence and the court gave an immediate curative instruction and emphasized the proper use of the prior conviction during final instructions. Under the circumstances, we find that the prosecutor's remark did not deprive defendant of a fair trial. *People v Federico*, 146 Mich App 776, 799; 381 NW2d 819 (1985). Therefore, the trial court did not abuse its discretion in denying the request for a mistrial.

Finally, defendant contends that his sentence violated the principle of proportionality. Defendant's minimum sentence was within the legislative guidelines range and, because he does not claim that the guidelines were improperly scored or the presentence report contained

inaccurate information, his sentence must be affirmed. MCL 769.34(10). “Under MCL 769.34(10), this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines.” *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002).

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Donald S. Owens